

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 15 1997

In the Matter of)

Reallocation of Television Channels)
60-69, the 746-806 MHZ Band)

ET Docket No. 97-157

To: The Commission

COMMENTS OF STEAD COMMUNICATIONS

James J. Stead, Jr. d.b.a. Stead Communications ("Stead"), by counsel, submits hereby its Comments in response to the Notice of Proposed Rule Making ("Notice"), released in the captioned proceeding on July 10, 1997.¹

Background Statement

Stead is an applicant for a construction permit for a new, full-power television broadcast station on Channel 69 in Des Moines, Iowa (BPCT-960405LL). This application is subject to the Notice, which in principal part looks toward the reallocation of the spectrum encompassing television channels 60 through 69; and, in part, seeks comment and suggestions as to whether some or all of the television applications falling within the prospectively reallocated spectrum may be maintained and granted

¹ FCC 97-245, adopted July 9, 1997; Federal Registrar, Vol. No. 147, pp. 41012, et seq., July 31, 1997.

consistent with the public interest goals underlying the Commission's reallocation proposal; and, if so, how that may be best be achieved.

Certain of the pending television applications subject to the Notice can, and should be, accommodated consistent with the achievement of the public interest goals described in the Notice as well as the equally important public interest goal of providing new television broadcast service to the public. To this end, Stead submits as follows:

1. Dismissing all pending applications for new television facilities on channels 60-69, as a class, is unwarranted;
2. To the extent that the Commission perceives undue impact on public safety or other use of the relevant spectrum, it should specifically provide the affected applicants a reasonable and timely opportunity to amend their applications to a channel below the Channel 60-69 grouping; and,
3. If a given application in the affected class cannot now be accommodated, as proposed above, the Commission should specially accord such applicants preferred status with respect to maintaining their applications and having first priority as to conforming channels which may subsequently become available.

1. Dismissal of the Subject Applications as a Class in Not Warranted.

In substantial part, the Notice recounts the perceived need to provide additional spectrum for public safety and other non-

broadcast uses in the overall public interest. Incident to the proposal to reallocate the Channel 60-69 grouping for those purposes, the Notice also appropriately inquires as to whether, and if so how, pending applications for Channels 60-69 might be accommodated consistent with such general reallocation. (Notice, Para. 22). Further to that general inquiry, the Notice specifically seeks comment as to whether the subject applications should be simply dismissed as a class without reference to other considerations. (Id.).

Although Stead acknowledges the need for additional spectrum to satisfy the public safety and other needs, it respectfully submits that summarily excluding all proposed standard television broadcast operations within that spectrum is unwarranted.

First, the class in question is relatively small when viewed on a nationwide basis.² Further, it is clear that at least some of the applications in question cannot reasonably conflict with the Commission's overall policy goal respecting public safety and

² The Notice indicated that a maximum of 33 proposed stations are involved nationwide (Notice, Para. 21). Given that the "freeze" sub-class is not within the contemplation of these comments, it follows that the number of newly proposed stations addressed here is less than 33 nationwide. The Notice also acknowledges that Channels 60-69 are now "...relatively lightly used for full service television operations." (Notice, Para. 2)

other uses.

Given just the foregoing considerations, the Commission should eschew the notion of summarily dismissing the applications in question. Although such action may hold facial attraction, it would at best constitute an expedient inconsistent with the Commission's underlying mandate reasonably to provide for maximally feasible services to the public.³

2. The Commission Should in Any Event Provide Any Adversely Affected Applicants A Reasonable Opportunity to Amend Their Applications.

The Notice also inquires as to "...whether we should provide [affected] parties an opportunity to amend their applications or petition proposals to obtain analog or DTV channels below channel 60.". (Id. at Para. 22). Stead submits that the Commission should provide for such an amendment, or petition process, as to any pending application in the Channel 60-69 grouping which, for whatever reason, may be deemed by the Commission to be materially inconsistent with the achievement of the policy goals underlying the Notice. Such a course is commended at the outset by basic fairness and equity. First, most of the television applications

³ That mandate appears to be acknowledged in the Notice, i.e., "It is our purpose to accommodate as broad a range of services as technically feasible...." (Para. 15).

in the potentially affected class have been on file for more than a year.⁴ Second, the applications represent substantial investments of funds, time and other assets by the respective applicants.

In a related proceeding involving comparable spectrum reallocation, the Commission properly found that such efforts by even prospective applicants ought to be recognized, where feasible, coincident with the Commission's pursuit of other public interest goals. Thus, in the proceedings leading to the Commission's adoption of the extant DTV Table of Allotments the Commission took specific note of the fact that many parties were then in the process of preparing applications for then-vacant NTSC channels and gratuitously provided an additional 30 days for the filing of such applications despite the prospect that such applications would to some extent fetter the overall DVT allocation process.⁵ Comparable recognition and sensitivity commends provision for appropriate amendments in this proceeding.

Provision for an amendment process would also serve the

⁴ Stead's application for Channel 69 in Des Moines, IA. was filed on April 5, 1996.

⁵ See Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd. 10968, 10992-93 (1996).

overall public interest in bringing presumably needed television transmission services to the communities in question. In sum, the Commission should specifically provide that any application in the relevant class may be amended to a conforming channel, where such a channel is shown to be available, within a specific time. The Commission should also signal its willingness to consider favorably minor waivers of technical rules to accommodate such channel changes.

3. The Commission Ought to Provide Maximally Feasible Relief for Adversely Affected Full Power Applicants.

In its recent adoption of the extant DTV Table of Allocations, the Commission recognized the potentially adverse affect thereof upon Low Power Television ("LPTV") operations.⁶ While confirming and continuing to impose "secondary" status on that group, the Commission also adopted rules changes and policies designed to minimize the adverse impact upon LPTV operations. (Id., Para. 142). Such provisions included allowance for replacement applications by LPTV operations displaced by new DTV operations, those to be processed on a first-come, first-

⁶ In re Advanced Television Systems and their Impact Upon the Existing Television Broadcast Services, MM Docket no. 87-268, Sixth Report and Order, FCC No. 97-115, released April 21, 1997, Paras. 114 et seq. ("Sixth Report").

served, non-competitive basis as well as a variety of technical rules changes intended to offer such operations greater flexibility. (Id., Para. 18).

The Notice here ultimately proposes for consideration the option "to provide some level of accommodation to low power operations in Channels 60-69 until the end of the DTV transition period in the year 2006, in order to give those stations time to relocate to other portions of the spectrum, change transmission channels, seek licensing as primary services, or otherwise modify their operations." (Id. Para. 20).

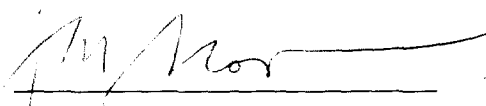
Stead suggests that the same level of concern with adverse impact and a related commitment to a broad range of remedies ought to be evidenced as to the long-pending, full-power applications for Channels 60-69. LPTV is a secondary service such that a given LPTV operation, in the event of operational/interference conflicts, must cede to a full-power television operation. An application to provide a full-power television service is entitled to at least the same level of consideration and related "remedial" undertakings as the Commission has accorded the LPTV service.

The Commission should in this proceeding also provide for the maximally feasible accommodation of pending full-power

applications for channels 60-69 consistent with its underlying goals respecting public safety and other uses of that spectrum. The Commission should at a minimum make provision for timely amendments to relocate to other portions of the spectrum, other appropriate channels, and conforming modifications generally.

Respectfully submitted,
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